

Preserving the Family Legacy

Estate planning not only protects wealth, but also safeguards core values, writes Chris Davis

A key aspect of estate planning, the purpose and function of setting up a trust, is often misunderstood. Christian Stewart, managing director, Family Legacy Asia, which advises families on family governance, says in addition to preserving wealth, a trust can also play an effective role in protecting family values.

“As Asian wealth is now being passed on to the third generation, and the number of beneficiaries grows larger, it is becoming an important part of trust solutions to ensure that family values, which may include support for charities, is able to continue. To achieve this, it is important that specific objectives are set out when a trust is established,” Stewart says.

Henry Lam, UBS head of wealth planning, Hong Kong, also believes trusts should be considered as a tool to achieve different goals. “Before setting up a trust it is important to clearly establish the aims of a trust. It is critical the correct steps are taken to avoid any hidden issues that might occur in the future,” Lam says.

He says it is not only the administration of assets that needs to be clearly established, but also, to avoid complications, the allocation of power to beneficiaries and trustees needs to be clearly defined. “Tax issues are one thing, but equally important is establishing channels of governance for the trustee and beneficiaries, so the wealth and legacy of the trust performs in the way it was intended to perform,” Lam says.

Michael Low, director, head of Bank Sarasin trust and fiduciary services, Asia, says selecting a trust jurisdiction is similar to making a decision about where an individual intends to conduct their private banking. Key factors are the political and economic stability of the jurisdiction, and the licensing and regulatory regime governing trust companies and banks.

He says a trust requires continuous review and, where necessary, adjustments to the structure to adapt to the evolving needs of the client. “Setting up a trust is a complex process that should be undertaken by experienced and respected advisers. There is no such thing as a ‘one-size-fits-all solution’. And a solution never stops, it is an ongoing process,” Low says.

He says, throughout the planning process and beyond, the laws of various jurisdictions

are also being updated and amended, so that any plan for the family can be a moving target.

“The key word is potential - a trust adviser needs to have the personal depth to be able to assist the client in making thoughtful, and far reaching long-term considerations,” Low says.

Mark Rawson, CEO with The Henley Group, says attention needs to be paid to where the beneficiaries of the trust are living and where the trust is administered.

“Taking the time to consult experts on issues such as tax exposure and obligations before a trust is set up can save a lot of complications in the future,” Rawson says.

He says when a trust involves a large number of beneficiaries and a diverse range of assets, it is important trustees and beneficiaries have a framework established so they can work together.

“Properly established, a trust can not only preserve wealth, it can help a family work together to preserve the family legacy over future generations,” Rawson says.

Darren Bowdern, tax partner with KPMG’s Hong Kong office, says when setting up a trust for asset protection or taxation purposes, it is important to take into account, where the trust is being administered from and the jurisdictions the settlor and any beneficiaries reside.

To promote the Hong Kong trust sector, Bowdern suggests a system that operates as a pass-through entity, where, for taxation purposes, the character and income of the trust means that beneficiaries are treated as if they held the investment directly.

“There is still some uncertainty because under Hong Kong law, trusts can be taxed as a separate entity. Therefore, an individual holding investments through a Hong Kong trust could be adversely affected if a trust is considered to be actively carrying out business in Hong Kong. This is usually not the case if an individual holds the investments personally. It would be ideal if there were greater clarity regarding the taxation issue.”